

FILED	RECEIVED
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COUNSEL/PARTIES OF RECORD	
MAR 23 2022	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

"COPY RETURNED"

Prayin Muhammad
Name 80707
Prison Number Lovelock Correctional Center
Place of Confinement

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Prayin Muhammad, Petitioner,)
(Full Name))
vs.) CASE NO. 3:22-cv-00142
(To b
Warden Tim Garrett, Respondent,)
(Name of Warden, Superintendent, jailor or)
authorized person having custody of petitioner)
and) PETITION FOR A
The Attorney General of the State of Nevada) WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY
(NOT SENTENCED TO DEATH)

1. Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: SECOND JUDICIAL DISTRICT COURT, Honorable KATHLEEN MORELLO DRAKULICH.

2. Full date judgment of conviction was entered: 07/03/2019. (month/day/year)

3. Did you appeal the conviction? X Yes No. Date appeal decided: 09/04/2019.

4. Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? X Yes No. If yes, name the court and date the petition was filed: SECOND JUDICIAL DISTRICT COURT 09/30/2019. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? X Yes No. Date the appeal was decided: 01/11/22. Have all of the grounds stated in this petition been presented to the state supreme court? X Yes No. If no, which grounds have not? _____.

5. Date you are mailing (or handing to correctional officer) this petition to this court: / / .

Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 No. If no, what was the prior case number? _____ And in what court was the prior action filed? _____

Was the prior action _____ denied on the merits or _____ dismissed for procedural reasons (check one). Date of decision: _____ / _____ / _____. Are any of the issues in this petition raised in the prior petition? Yes No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? Yes No.

7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? Yes No. If yes, state the name of the court and the nature of the proceedings: SECOND DISTRICT
DISTRICT COURT; MOTION TO REDUCE SENTENCE; ALTERNATIVE TO PRISON etc

8. Case number of the judgment of conviction being challenged: CR18-1944

9. Length and terms of sentence(s): 60 months to 180 months

10. Start date and projected release date: 01-29-2018; PEO 9/7/23 exp 9/12/25

11. What was (were) the offense(s) for which you were convicted: N.R.S. 200.380;
Category B Felony (Robbery)

12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:

13. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>James Hickman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
trial/guilty plea	<u>James Hickman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
sentencing	<u>DAVID Niedert</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
direct appeal	<u>Rafim Muhammad</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1st post-conviction petition	<u>Karen Kay Borko</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
appeal from post conviction	<u>Karen Kay Borko</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2nd post-conviction petition		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
appeal from 2nd post-conviction		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 14th, 5th Amendment right to the United States Constitution, based on these facts:

The Federal Constitution guarantee that I receive Due Process and Equal Protection of the Law, which were violated when the STATE COURTS failed to grant me relief and/or an EVIDENTIARY HEARING upon a timely filed Post Conviction pursuant to NRS CHAPTER 34 w/ supportive documents and factual meritorious claims. Before sentencing, I presented several mitigating letters to former attorney Jarrod Hickman, who failed to either transmit and/or submit all character reference documents to the Courts and succeeding attorney, David Niedert. After notifying David Niedert of the missing mitigating documents, he failed to investigate and adequately address the matter before and during sentencing. By not presenting all mitigating documents, I was deprived of a fair and impartial sentencing. Consequently, I was given the maximum term of 180 months denying me Equal Protection of the Law. N.R.S 200.380, the crime of Robbery is probational or imprisonment from a minimum of 24 months to the maximum term of 180 months. The character letters would have attested to my positive contributions to the community, my mentorship with at-risk youth, employment, and academic participation in several colleges. Furthermore, my Presentence Investigation Report (PSI) was submitted to the Courts with a harmful error, stating the allege weapon was a "hand gun" instead of a plastic "toy gun" as the police and Forensic Report conclusively stated. This egregious error in my PSI report will negati-

Exhaustion of state court remedies regarding Ground 1:

GROUND 1. cont.

ely impact my Classification status in Nevada Department of Corrections (NDOC) and my chances of parole eligibility since your PSI is a critical instrument and determining your prison classification status and suitability of parole. Both of the above-mentioned can significantly affect your life and liberty. There is also other extenuating circumstances that exist such as my substantial assistance with Reno Police Department (RPD) that lead to the arrest and conviction of two defendants MAX REED & Deyandre Holmes, who are currently incarcerated in Nevada Department of Corrections. Jaffar Richardson, another accomplice, also incarcerated in NDOC, whom I believe has maliciously & intentionally circulated the investigative report i.e. Paperwork to several inmates to disclose my involvement and active cooperation in the homicide investigation. The state Courts, armed with this knowledge and potential danger I face, exceeded the recommended 48 to 120 months by the Department of Public Safety / Parole & Probation, therefore exposing me to the maximum time of danger. Prison is a hostile and violent environment, and cooperation with Law Enforcement only exacerbates and increases your chances of being in a violent even deadly confrontation. I'm seeking immediate relief from this disregard of my constitutional rights !!!!

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: I filed a direct appeal and my attorney David Neelat told me to withdraw and file a state post conviction

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: Second Judicial District Court date petition filed 09/30/2019.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed / /.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: I filed a separate motion with the District Court which is still pending but apparently couldn't be decided until the Remittitur was issued by the Nevada Supreme Court.

State concisely every ground for which you claim that the state court conviction and/or sentence is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 6th Amendment right to United STATES Constitution, based on these facts:

My sixth Amendment right to Effective Assistance of Counsel was denied when former Counsel Jarrod Hirkman failed to transfer a full and complete record, containing mitigating documents and character reference material to David Niedert. After promptly notifying my Subsequent Counsel David Niedert about the Character letters, he failed to investigate and take appropriate measures to recover the documents. David Niedert also failed to screen and evaluate the Presentence Investigation Report (PSI) for accuracy, allowing the PSI to be submitted in error regarding the weapon that was recovered, which was a "Toy gun" and not a "hand gun". After Counsel was notified of this harmful error never took any corrective actions. Counsel was also ineffective when presenting the gravity and danger of my cooperation with Law Enforcement to the Courts and how I would be subjected to a high-risk of danger if Sentence to prison. In fact, Counsel at one point was appointed to represent convicted murderer D. Holmes on appeal while representing me. NDOC is an extremely small prison system making it more difficult to constructively, productively, and safely due my time. Every day I live in fear and anxiety of having an unfortunate violent encounter with inmates, enforcing "street codes" and "prison policies" for offering & Cooperating with Law enforcement
IM seeking an immediate resentencing and/or Evidentiary Hearing.

Exhaustion of state court remedies regarding Ground 2:

- Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____,

based on these facts:

Exhaustion of state court remedies regarding Ground 3:

► Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

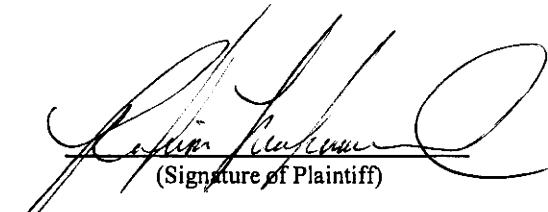
If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

Rahim Muhammad
(Name of person who wrote this
complaint if not Plaintiff)


(Signature of Plaintiff)
3/20/22
(Date)

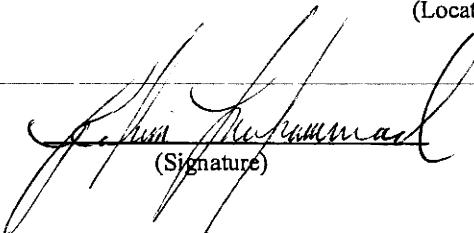
(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to
penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF
THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**
See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Level:K Correctional Center on 03/20/22.
(Location) (Date)


(Signature)

80707
(Inmate prison number)

Nevada Supreme Court Docket Sheet**Docket: 79223****MUHAMMAD (RAHIM) VS. STATE****Page 1**

RAHIM MUHAMMAD,
Appellant,
vs.

Case No. 79223

THE STATE OF NEVADA,
Respondent.

Consolidated with:

Counsel

Rahim Muhammad, Carson City, NV, Appellant, in proper person

Attorney General/Carson City, Carson City, NV \ Aaron D. Ford, as counsel for Respondent, The State of Nevada
Washoe County District Attorney, Reno, NV \ Jennifer P. Noble, as counsel for Respondent, The State of Nevada

Case Information**Panel: SNP19****Panel Members: Hardesty/Stiglich/Silver****Disqualifications:****Case Status: Disposition Filed/Case Closed****Category: Criminal Appeal Type: Other****Subtype: Direct/Proper Person****Submitted:****Date Submitted:****Oral Argument:****Sett. Notice Issued:****Sett. Judge:****Sett. Status:****Related Court Cases:****District Court Case Information****Case Number: CR181944****Case Title: STATE OF NEVADA VS RAHIM MUHAMMAD****Judicial District: Second****Division:****County: Washoe Co.****Sitting Judge: Scott N. Freeman****Replaced By:****Notice of Appeal Filed: 07/18/19 Appeal
07/26/19 Appeal****Judgment Appealed From Filed: 07/03/19****Docket Entries****Date Docket Entries**

07/23/19 Appeal Filing Fee waived. Criminal. (SC)

07/23/19 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day. 19-030949
(SC)

07/30/19 Filed Notice of Appeal/Proper Person. (Second NOA) (SC) 19-032119

07/31/19 Filed Proper Person Appellant's Notice of Withdrawal of Appeal. (SC) 19-032307

09/04/19 Filed Order Dismissing Appeal. "ORDERS this appeal DISMISSED." Case Closed/No
Remittitur Issued. SNP19-JH/LS/AS. (SC). 19-037010

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79223

FILED

SEP 04 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *J. Hardesty*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant has filed a notice to voluntarily dismiss this appeal. This court elects to treat this notice as a motion for a voluntary dismissal of this appeal. Cause appearing, the motion is granted. NRAP 42(b). Accordingly, this court

ORDERS this appeal DISMISSED.¹

J. Hardesty, J.

Hardesty

Stiglich, J.

Stiglich

Silver, J.

Silver

¹Because no remittitur will issue in this matter, *see* NRAP 42(b), the one-year period for filing a postconviction habeas corpus petition under NRS 34.726(1) shall commence to run from the date of this order.

19-37010

cc: Hon. Scott N. Freeman, District Judge
Rahim Muhammad
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
ISIDRO BACA, WARDEN; AND THE STATE
OF NEVADA,
Respondents.

Supreme Court No. 81367
District Court Case No. CR181944

FILED

JAN 25 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]* DEPUTY CLERK

REMITTITUR

TO: Alicia L. Lerud, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 11, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

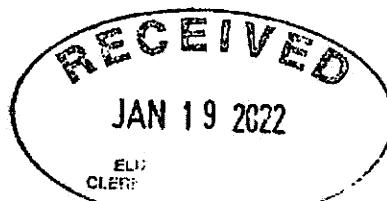
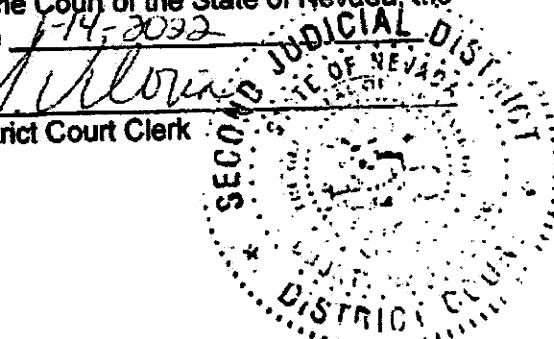
cc (without enclosures):

Hon. Kathleen M. Drakulich, District Judge
Karla K. Butko
Washoe County District Attorney \ Jennifer P. Noble, Kevin P. Naughton

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on 1-14-2022

[Signature] District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
ISIDRO BACA, WARDEN; AND THE STATE
OF NEVADA,
Respondents.

Supreme Court No. 81367
District Court Case No. CR181944

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of December, 2021.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 11, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

Nevada Supreme Court Docket Sheet

Docket: 81367

MUHAMMAD (RAHIM) VS. WARDEN

Page 1

RAHIM MUHAMMAD,
Appellant,
vs.
ISIDRO BACA, WARDEN; AND THE STATE OF NEVADA,
Respondents.

Case No. 81367

Consolidated with:

Counsel

Karla K. Butko, Verdi, NV, as counsel for Appellant, Rahim Muhammad

Attorney General/Carson City, Carson City, NV \ Aaron D. Ford, as counsel for Respondents, Isidro Baca and The State of Nevada

Washoe County District Attorney, Reno, NV \ Kevin P. Naughton, Jennifer P. Noble, as counsel for Respondents, Isidro Baca and The State of Nevada

Case Information

Panel: CSOP12-21

Panel Members: Hardesty/Herndon/Gibbons

Disqualifications:

Case Status: Remittitur Issued/Case Closed

Category: Criminal Appeal Type: Other

Subtype: Post-Conviction

Submitted: On Record and Briefs

Date Submitted: 12/03/20

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Court Cases:

79223

District Court Case Information

Case Number: CR181944

Case Title: STATE VS. RAHIM MUHAMMAD

Judicial District: Second

Division:

County: Washoe Co.

Sitting Judge: Kathleen M. Drakulich

Replaced By:

Notice of Appeal Filed: 06/16/20 Appeal

Judgment Appealed From Filed: 05/28/20

Docket Entries

Date	Docket Entries	
06/23/20	Appeal Filing Fee Waived. Criminal. (SC)	
06/23/20	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement and Notice of Briefing Schedule mailed to counsel for appellant.) (SC)	20-023321
06/29/20	Filed Docketing Statement Criminal Appeals. (SC)	20-024014
06/29/20	Filed Notice of No Transcript Request. (SC)	20-024017
10/13/20	Filed Appellant's Opening Brief. (SC)	20-037571
10/13/20	Filed Appellant's Appendix - Volume 1 (part 1). (SC)	20-037572
10/13/20	Filed Appellant's Appendix - Volume 1 (part 2) (continued). (SC)	20-037573

Nevada Supreme Court Docket Sheet

Docket: 81367	MUHAMMAD (RAHIM) VS. WARDEN	Page 2
10/13/20	Filed Appellant's Appendix - Volume 2. (SC)	20-037574
10/13/20	Filed Case Appeal Statement (Criminal). (SC)	20-037578
10/15/20	Filed Appellant's Motion for District Court Clerk to Transmit Presentence Investigation Report. (SC)	20-037952
10/16/20	Filed Order Granting Motion to Transmit Presentence Investigation Report. Due: 14 days. (SC)	20-038163
11/03/20	Filed Presentence Investigation Report (SEALED). (SC)	
11/10/20	Filed Notice of Appearance (Kevin Naughton, Appellate Deputy as counsel for respondent). (SC)	20-041208
11/10/20	Filed Respondent's Answering Brief. (SC)	20-041209
12/03/20	Filed Appellant's Reply Brief. (SC)	20-043767
12/03/20	Submitted for Decision. (SC)	
02/25/21	Filed Proper Person Notice of Change of Address. (Appellant) (SC)	21-005589
04/07/21	Filed Notice of Change of Address (Rahim Muhammad). (SC)	21-010063
05/05/21	Filed Proper Person Appellant's Notice of Change of Address. (SC)	21-012907
08/03/21	Filed Appellant's Notice of Supplemental Authorities Pursuant to NRAP 31(e). (SC)	21-022542
12/17/21	Filed Order of Affirmance. "ORDER the judgment of the district court AFFIRMED." fn1 [The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.] JH/DH/MG. (SC)	21-035983
01/11/22	Issued Remittitur. (SC)	22-001117
01/11/22	Remittitur Issued/Case Closed. (SC)	

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
ISIDRO BACA, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 81367

FILED

DEC 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge. Appellant Rahim Muhammad argues that the district court erred in denying his petition as procedurally barred.

Muhammad was convicted pursuant to a guilty plea. In his petition for postconviction habeas relief, Muhammad alleged that counsel provided ineffective assistance during the sentencing hearing. Muhammad specifically argued that counsel should have provided letters of community support and evidence showing his college attendance and public service. The district court concluded that the petition was barred under NRS 34.810(1)(a) because Muhammad pleaded guilty and the petition was "not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." In rejecting Muhammad's petition, the district court did not have the benefit of this court's recent decision in *Gonzales v. State*, 137 Nev., Adv. Op. 40, 492 P.3d 556, 562 (2021). In *Gonzales*, we clarified that a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing because that claim could not have been raised before entering the plea and barring such a claim would "violate the spirit of our

71-35983

habeas statute and the public policy of this state.” *Id.* at 562. Accordingly, the district court erred in concluding that NRS 34.810(1)(a) barred Muhammad’s petition.

Nevertheless, the district court found that the specific pieces of evidence that Muhammad asserted had not been presented conveyed the same information as the sentencing statement and exhibits that counsel had presented to the sentencing court. Substantial evidence supports this finding, which is not clearly wrong. *See Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (deferring to the district court’s factual findings that are supported by substantial evidence and not clearly wrong, but reviewing its application of the law to those facts *de novo*). In each of Muhammad’s claims, he alleges that the omission of the additional evidence prejudiced him. As that mitigation evidence was cumulative, however, Muhammad has not shown that its presentation would have led to a reasonable probability of a different outcome and thus has not shown prejudice. *Strickland v. Washington*, 466 U.S. 668, 687-88, 696-97 (1984) (stating showings required for ineffective assistance of counsel and for its prejudice component and providing that the claim fails if both components are not shown); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Therefore, the district court reached the correct outcome in denying Muhammad’s petition without an evidentiary hearing. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (providing that an evidentiary hearing is not warranted where a postconviction habeas petition’s factual allegations are “belied or repelled by the record”); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 340 (1970) (“If a judgment or order of a trial court reaches the right result,

although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.”).¹

Having concluded that relief is not warranted, we
ORDER the judgment of the district court AFFIRMED.²

J. Hardesty, C.J.
Hardesty

H J.
Herndon

M. Gibbons, Sr.J.
Gibbons

cc: Hon. Kathleen M. Drakulich, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Insofar as Muhammad argues that counsel should have sought to correct the PSI report to reflect that the gun used was a toy gun and should have challenged systemic racial bias in the judicial system, and that appellate counsel was ineffective for advising him to dismiss his direct appeal, these claims were not raised in the pro se or supplemental habeas petitions filed below. We decline to address them for the first time on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by *Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

²The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

3700

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

RAHIM MUHAMMAD,

Petitioner,

Case No.: CR18-1944
Dept. No.: 1

THE STATE OF NEVADA,

Respondent.

**ORDER STAYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO THE SIXTH AMENDMENT OF THE FEDERAL/STATE
CONSTITUTION AND ALL OTHER APPLICABLE LAWS; STAYING PLAINTIFF'S EX-
PARTE APPLICATION/MOTION TO REDUCE SENTENCE, ALTERNATIVE TO
PRISON, OTHER APPLICABLE OPTIONS; AND STAYING CASE**

Currently before the Court is Petitioner Rahim Muhammad’s (“Petitioner”) *Motion for Appointment of Counsel Pursuant to the Sixth Amendment of the Federal/State Constitution and all Other Applicable Laws* (“Motion”) filed September 1, 2021. On September 13, 2021, the State of Nevada (“State”) filed an *Opposition to Motion for Appointment of Counsel Pursuant to the Sixth Amendment of the Federal/State Constitution and all Other Applicable Laws* (“Opposition”).¹

Also before this Court is Petitioner's *Ex-Parte Application/Motion to Reduce Sentence; Alternative to Prison; Other Applicable Options* ("Application") filed April 4, 2021. On July 29, 2021, this Court issued its Order for Response, requiring the State to file a response to the Application.

¹ The time for Petitioner to file a reply expired on September 20, 2021. WDCR 12(4). The Motion has not been submitted to the Court. However, this Court deems it prudent to undertake consideration of the Motion.

1 On September 13, 2021, the State filed its *Opposition to Ex-Parte Application/Motion to Reduce*
 2 *Sentence; Alternative to Prison; Other Applicable Options* (“Opposition”). On October 1, 2021,
 3 Petitioner filed his *Reply to Respondents (sic) Opposition to Ex-Parte Application/Motion to Reduce*
 4 *Sentence; Alternative to Prison; Other Applicable Options* (“Reply”) and submitted the Application
 5 to the Court.

6 **I. Background**

7 Petitioner pled guilty and was convicted of Robbery. Opp. at 2:2. The Petitioner was sentenced
 8 to a minimum term of 60 months imprisonment and a maximum term of 180 months imprisonment
 9 pursuant to a Judgment of Conviction filed July 3, 2019. *Id.* at 2:2-4. The Petitioner filed a Notice of
 10 Appeal on July 18, 2019, and a second Notice of Appeal on July 26, 2019. *Id.* at 2:5-6. The Petitioner
 11 later voluntarily withdrew his appeal. *See Order Dismissing Appeal*, Nevada Supreme Court Docket
 12 No. 79223, filed September 4, 2019. On September 30, 2019, the Petitioner filed a Petition for Writ
 13 of Habeas Corpus (Post-Conviction). Opp. at 2:9-10. Counsel was subsequently appointed on
 14 December 3, 2019. *See Recommendation and Order Appointing Counsel (Post Conviction)*, filed
 15 December 3, 2019. Petitioner’s counsel filed a Supplemental Petition for Writ of Habeas Corpus
 16 (Post-Conviction) on January 30, 2020. Opp. at 2:11-12. The State filed a Motion to Dismiss on
 17 March 30, 2020. *Id.* at 2:12-13. After briefing, the Court entered an Order Granting Motion to
 18 Dismiss on May 28, 2020. *Id.* at 2:13-14. The Petitioner appealed and the matter is currently pending
 19 before the Nevada Supreme Court under docket number 81367. *See Notice of Appeal*, filed June 16,
 20 2020.

21 **II. Legal Authority**

22 “Jurisdiction in an appeal is vested solely in the supreme court until the remittitur issues to
 23 the district court. Under the relevant statutes, the supreme court has control and supervision of an
 24 appealed matter from the filing of the notice of appeal until the issuance of the certificate of
 25 judgment.” *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994)) (citing NRS 177.155,
 26 “The supervision and control of the proceedings on appeal shall be in the appellate court from the
 27 time the notice of appeal is filed with its clerk, except as otherwise provided in this title.”). Further,
 28 the U.S. Supreme Court has noted, “the power to stay proceedings is incidental to the power inherent

1 in every court to control the disposition of the causes on its docket. . . ." *Landis v. N. Am. Co.*, 299
 2 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936).

3 **III. Analysis**

4 **a. Motion for Appointment of Counsel Pursuant to the Sixth Amendment of the**
 5 **Federal/State Constitution and all Other Applicable Laws**

6 Petitioner states that on April 2, 2021, and on June 30, 2021, he filed and submitted documents
 7 with the Courts. Mot. at 2.² He states that he has recently completed the automotive course while
 8 incarcerated and that he will now be transferred to the Humbolt (sic) Conservation Camp, unless
 9 otherwise reassigned. *Id.* Petitioner contends that the rural camps do not have adequate access to law
 10 libraries, research materials, etc., and that requesting and receiving time sensitive materials is
 11 important. *Id.* Given safety and security protocols, Petitioner is prevented from knowing when he
 12 might be transferred to camp. *Id.* at 3. Petitioner requests the appointment of counsel due to the
 13 geographic, logistical, safety and security factors, in order that he may effectively litigate and have
 14 easy access to the courts. *Id.*

15 The State opposes the Motion and contends that Petitioner's filing is a fugitive document and
 16 should be ignored. Opp. at 2:20. The State argues that Petitioner has been, and remains, represented
 17 by counsel, Karla Butko, and she has not withdrawn as counsel of record. *Id.* at 2:21-23. The State
 18 contends that a defendant may not file documents in proper person while they are represented by
 19 counsel (citing *generally* Supreme Court Rule 46 (allowing for a change of attorney upon either
 20 consent of the attorney with approval of the client or upon order of the court); Second Judicial District
 21 Court Criminal Rule 11(2) (requiring that any withdrawal of an attorney be done in writing and must
 22 be approved by the court); Washoe District Court Rule ("WDCR") 3(6) (requiring that attorneys
 23 representing defendants in criminal cases to serve a motion when desiring to withdraw from a case);
 24 WDCR 23(1) ("When a party has appeared by counsel, that individual cannot thereafter appear on
 25 his/her own behalf in the case without the consent of the court" and further explaining the process by
 26 which an attorney may withdraw or otherwise be replaced); Nevada Rules of Criminal Practice 3(1)

28
 2 The Motion was submitted on unlined paper. Accordingly, line references are not included.

1 (“When a defendant is represented by an attorney, that defendant cannot appear on their own behalf
 2 in the case without the consent of the court.”)). *Id.* at 2:23-3:11.

3 Next, the State contends that this Court currently lacks jurisdiction. *Id.* at 3:13. Once a notice
 4 of appeal has been filed, jurisdiction is vested solely in the Supreme Court (citing *Buffington v. State*,
 5 110 Nev. 124, 126, 868 P.2d 643, 644 (1994)). *Id.* at 3:13-20. The State notes that Petitioner filed a
 6 Case Appeal Statement (Criminal) on October 13, 2020, and that the appeal is still pending before the
 7 Nevada Supreme Court. *Id.* at 3:20-21. Therefore, jurisdiction is currently solely vested in the
 8 Nevada Supreme Court. *Id.* at 3:22.

9 Finally, the State argues that the Motion ignores that Petitioner currently enjoys the benefit of
 10 being represented by appointed counsel yet, fails to explain why he has filed documents in pro per,
 11 his authority for doing so, or why he believes that a new appointment of counsel is necessary. *Id.* at
 12 3:23-4:2.

13 Having viewed and considered the pleadings and the relevant legal authority, this Court finds
 14 good cause to stay consideration of the Motion. As noted by the State, this case is on appeal to the
 15 Nevada Supreme Court and this Court no longer has jurisdiction. *Szluha v. State*, No. 78210, 2020
 16 WL6955680, at *1 (Nev. Nov. 25, 2020) (“The district court erred in several respects in its resolution
 17 of the petition. First, the district court did not have jurisdiction to amend the May 30 written order
 18 because jurisdiction over the proceedings had been vested in this court by the filing of the notice of
 19 appeal”) (citing *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (“Jurisdiction in an
 20 appeal is vested solely in the supreme court until the remittitur issues to the district court. Under the
 21 relevant statutes, the supreme court has control and supervision of an appealed matter from the filing
 22 of the notice of appeal until the issuance of the [remittitur].”) *Id.* Petitioner filed a Case Appeal
 23 Statement (Criminal) on October 13, 2020, and that the appeal is still pending before the Nevada
 24 Supreme Court. Therefore, jurisdiction is currently solely vested in the Nevada Supreme Court until
 25 remittitur occurs. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998) (stating
 26 “The purpose of a remittitur, aside from returning the record on appeal to the district court, is twofold:

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1 it divests [the Nevada Supreme Court] of jurisdiction over the appeal and returns jurisdiction to the
2 district court, and it formally informs the district court of this court's final resolution of the appeal.").³

b. Ex-Parte Application/Motion to Reduce Sentence; Alternative to Prison; Other Applicable Options

5 Petitioner states that the Application is intended “to secure a reduction in sentence, and
6 alternate to prison by way of programs, community service, house arrest, halfway house, drug court,
7 sober living house, etc., etc.,” App. at 2.⁴ The Application was filed to “protect, secure, and ensure”
8 Petitioner’s “overall well being (sic) (mental, pshychological (sic), emotional, social, physical)
9 especially due to the extenuating circumstances such as coronavirus.” *Id.* Petitioner contends that he
10 is being subject to violent attacks and labeled a “snitch” because of his cooperation with police. *Id.*
11 He is unable to sleep and suffers from anxiety and is “proposing to pay a \$7,000 fine upfront in
12 conjunction w/the reduction of sentence and other available remedies.” *Id.*

13 The State reiterates the arguments that it set forth in the Opposition related to the Application
14 being a rogue document, Petitioner's current representation by counsel and this Court's lack of
15 jurisdiction because Petitioner has appealed his case to the Nevada Supreme Court. *See generally*
16 Opp.

Having viewed and considered the pleadings and the relevant legal authority, this Court finds good cause to stay consideration of the Application on the same basis that it stayed the Motion namely, Petitioner's appeal is still pending before the Nevada Supreme Court where jurisdiction is currently solely vested.

21 Based upon the foregoing and good cause appearing,

22 IT IS HEREBY ORDERED that further proceedings in this case are stayed. Accordingly, no
23 motions will be entertained until a remittitur from the Supreme Court is filed in this matter. Until the
24 remittitur is filed, any motions submitted for decision, including the above-mentioned *Motion for*
25 *Appointment of Counsel Pursuant to the Sixth Amendment of the Federal/State Constitution and all*

³ Regarding Petitioner’s appointment of counsel, it is worth noting that Petitioner was in fact appointed counsel in 2019. See Recommendation and Order Appointing Counsel (Post Conviction), filed December 3, 2019. Petitioner has never expressed dissatisfaction with his counsel before or after she filed a Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) on January 30, 2020, on Petitioner’s behalf. Petitioner has never sought to remove his counsel.

⁴ The Motion was submitted on unlined paper. Accordingly, line references are not included.

1 *Other Applicable Laws Motion for Order Forfeiting Deductions of Time Earned*, and the above-
2 mentioned *Ex-Parte Application/Motion to Reduce Sentence; Alternative to Prison; Other Applicable*
3 *Options* will be held in abeyance without further order from the Court. Once the remittitur is filed,
4 Petitioner may resubmit the motions for decision.

5 IT IS SO ORDERED.

6 DATED this 26th day of October, 2021.

7 
8 KATHLEEN M. DRAKULICH
9 DISTRICT JUDGE

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CERTIFICATE OF SERVICE

CASE NO. CR18-1944

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 26th day of October, 2021, I electronically filed the **ORDER STAYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO THE SIXTH AMENDMENT OF THE FEDERAL/STATE CONSTITUTION AND ALL OTHER APPLICABLE LAWS; STAYING PLAINTIFF'S EX-PARTE APPLICATION/MOTION TO REDUCE SENTENCE, ALTERNATIVE TO PRISON, OTHER APPLICABLE OPTIONS; AND STAYING CASE** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

KEVIN NAUGHTON, ESO, for STATE OF NEVADA

DAVID NEIDERT, ESO.

KELLY KOSSOW, ESO, for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

KARLA BUTKO, ESQ. for RAHIM MUHAMMAD

**Deposited in a sealed envelope with postage for mailing using the United States Postal Service
in Reno, Nevada:**

RAHIM MUHAMMAD (80707)
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

Carriele Redmond
Department 1 Judicial Assistant

FILED
Electronically
CR18-1944
2020-05-29 09:16:24 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7898716

1 CODE 2540
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7
8 STATE OF NEVADA, Case No: CR18-1944
9 Plaintiff, Dept. No: 1
10 vs.
11
12 RAHIM MUHAMMAD,
13 Defendant.
14

15 NOTICE OF ENTRY OF ORDER
16

17 PLEASE TAKE NOTICE that on May 28, 2020, the Court entered a decision or
18 order in this matter, a true and correct copy of which is attached hereto.

19 Dated May 29, 2020.
20

21 JACQUELINE BRYANT
22 Clerk of the Court

23 /s/N. Mason
24 N. Mason-Deputy Clerk
25
26
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28

CERTIFICATE OF SERVICE

Case No. CR18-1944

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on May 29, 2020, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

KEVIN P. NAUGHTON, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
CHRISTOPHER DAY, ESQ. for STATE OF NEVADA
DAVID K. NEIDERT, ESQ.
KARLA BUTKO, ESQ. for RAHIM MUHAMMAD (TN)

I further certify that on May 29, 2020, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701-4717

Rahim Muhammad (#80707)
Northern Nevada Correctional Center
P. O. Box 7000
Carson City, NV 89702

The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding document does not contain the personal information of any person.

Dated May 29, 2020.

/s/N. Mason
N. Mason- Deputy Clerk

FILED
Electronically
CR18-1944
2020-05-28 08:13:30 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7896078

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9

10 RAHIM MUHAMMAD,

11 Petitioner.

12 Case No.: CR18-1944

13 vs.

14 Dept. No.: 1

15 ISIDRO BACA, WARDEN, & THE STATE OF
16 NEVADA,

17 Respondents.

18 **ORDER GRANTING MOTION TO DISMISS**

19 Currently before the Court is the State of Nevada's *Motion to Dismiss* ("Motion") filed March
20 30, 2020. On April 6, 2020, Petitioner Rahim Muhammad ("Petitioner") filed an *Opposition to*
21 *Motion to Dismiss: Petition & Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)*.
22 On April 13, 2020, the State of Nevada filed a *Reply in Support of Motion to Dismiss* and submitted
23 the Motion to the Court for consideration.

24 **I. Background**

25 Petitioner pled guilty to robbery and was sentenced to a minimum term of sixty (60) months
26 imprisonment and a maximum term of one-hundred-eighty months imprisonment. *Judgment of*
27 *Conviction* at 1:16–22. Petitioner filed a notice of appeal on July 18, 2019, but later voluntarily
28 withdrew that appeal on September 4, 2019. Mot. at 2:6–9. On September 30, 2019, Petitioner filed
the *Petition for Writ of Habeas Corpus (Post-Conviction)* ("Petition"). After being appointed

1 counsel, he subsequently filed a *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)*
 2 (“Supplemental Petition”) on January 30, 2020. *Id.* at 2:10–13.

3 **II. Relevant Legal Authority**

4 NRS 34.810(1)(a) provides in relevant part:

5 1. The court shall dismiss a petition if the court determines that:
 6 (a) The petitioner’s conviction was upon a plea of guilty or guilty but
 7 mentally ill and the petition is not based upon an allegation that the plea was
 8 involuntarily or unknowingly entered or that the plea was entered without
 9 effective assistance of counsel.

10 Application of the procedural default rules to post-conviction petitions for writs of habeas
 11 corpus is mandatory and cannot be waived by the parties. *State v. Haberstroh*, 119 Nev. 173, 180,
 12 69 P.3d 676, 681 (2003). A district judge has a duty to consider whether any or all of the claims made
 13 are procedurally barred, and the failure to do so is an abuse of discretion. *State v. Eighth Judicial*
 14 *District Court*, 121 Nev. 225, 230, 112 P.3d 1070, 1074 (2005). As the Nevada Supreme Court has
 15 stated, the Nevada Legislature never intended for petitioners to have multiple opportunities to obtain
 16 post-conviction relief absent extraordinary circumstances. *Pelligrini v. State*, 117 Nev. 860, 876, 34
 17 P.3d 519, 530 (2001) (*abrogated on other grounds*).

18 **III. Analysis**

19 The State argues that NRS 34.810(1)(a) is a mandatory procedural bar that precludes both the
 20 Petition and Supplemental Petition in this case because the alleged deficiencies do not pertain to the
 21 voluntariness or knowledge of Petitioner’s plea or the effectiveness of his counsel in entering his plea.
 22 Mot. At 3:3–13. The State alleges that ground one of the Petition and Supplemental Petition alleges
 23 both of Petitioner’s counsel, Jarrod Hickman and David Neidert, were ineffective for failing to
 24 investigate or provide mitigating information at sentencing. *Id.* at 3:3–9. The State further alleges
 25 that ground two of the Petition reasserts ground one as to Mr. Neidert because he allegedly failed to
 26 complete a full investigation before sentencing. *Id.* at 3:14–19.

27 Petitioner argues that the general standard that a petitioner has a right to a postconviction
 28 evidentiary hearing when the petitioner asserts claims supported by specific factual allegations not
 29 belied by the record that, if true, would entitle him to relief, should control this Court’s analysis. Opp.

1 at 2:10–15. Petitioner contends he seeks a hearing, and if this Court agrees with the State’s application
2 of NRS 34.810(1)(a) it would render the sentencing proceeding a nullity, be contrary to constitutional
3 caselaw, and conflict with the United States Constitution. *Id.* at 2:22–3:2. Petitioner states the
4 application of NRS 34.810(1)(a) would violate Petitioner’s constitutional rights. *Id.* at 3:11–13.
5 Petitioner points out the State has failed to cite any published opinion from the Nevada Supreme
6 Court that agrees with its interpretation because no such caselaw exists. *Id.* at 3:13–17. Petitioner
7 argues that Nevada courts have held that counsel has a duty to make reasonable investigations and
8 effectively represent defendants at the sentencing stage. *Id.* at 3:20–4:7. Petitioner contends the
9 State’s argument cannot withstand constitutional review because of a litany of federal cases that have
10 held that reasonable investigation and presentation of mitigation evidence is required at the sentencing
11 stage. *Id.* at 4:17–6:19. Petitioner emphasizes that applying NRS 34.810(1)(a) as a mandatory
12 procedural bar to all claims that do not relate to the nature and entry of the guilty plea ignores standing
13 constitutional law. *Id.* at 6:19–21. Petitioner argues the reason the State cannot find a case
14 interpreting NRS 34.810(1)(a) in this manner is because it would violate the Sixth and Fourteenth
15 Amendments. *Id.* at 7:24–27. Petitioner contends the State’s interpretation would render the right to
16 counsel at the critical stage of sentencing null. *Id.* at 8:1–8. Petitioner maintains he should be allowed
17 to proceed to an evidentiary hearing on the claims he raised herein. *Id.* at 9:1–2.

18 The State maintains the cases cited by the Petitioner are readily distinguishable and that
19 because post-conviction petitions for writs of habeas corpus are creatures of statute, the legislature
20 may limit the types of claims that can be raised. Reply at 1:21–2:16. The State points out that with
21 the exception of two of the cases cited by Petitioner, none of them were the result of guilty pleas. *Id.*
22 at 2:21–3:16. With regard to *Strickland*, the defendant pled guilty to all charges against his counsel’s
23 advice and waived his right to an advisory jury at the capital sentencing hearing, defense counsel
24 presented very little evidence at sentencing, and did not cross-examine the medical experts called by
25 the State, and the case was not applying Nevada law. *Id.* at 2:23–3:23. In regards to *Kirksey*, the
26 Nevada Supreme Court only examined the reasonableness of defense counsel’s pre-plea actions. *Id.*
27 at 3:23–24. The State points out several of the cases Petitioner cites deal with pre-plea ineffective
28 assistance and do not involve effectiveness of counsel at sentencing so they are distinguishable from

1 this case. *Id.* at 3:17–4:2. The State also points out that in unpublished decisions the Nevada Supreme
 2 Court has acknowledged NRS 34.810(1)(a) limits the scope of post-conviction writs of habeas corpus
 3 in which the petitioner pled guilty. *Id.* at 5:1–9.

4 Having reviewed the pleadings on file and having reviewed the facts and legal support set
 5 forth therein, this Court finds good cause to grant the Motion. This Court finds that the plain language
 6 of NRS 34.810(1)(a) unambiguously restricts the scope of the relief available to petitioners who file
 7 habeas corpus petitions after a guilty plea. The Nevada Supreme Court has held that “[t]he legislature
 8 may . . . impose a reasonable regulation on the writ of habeas corpus, so long as the traditional efficacy
 9 of the writ is not impaired.” *Passanisi v. Dir., Nevada Dep’t of Prisons*, 105 Nev. 63, 66, 769 P.2d
 10 72, 74 (1989) (citing *Grego v. Sheriff*, 94 Nev. 48, 574 P.2d 275 (1978)). This Court is not persuaded
 11 that NRS 34.810(1)(a) impairs the traditional efficacy and as such is a reasonable regulation on the
 12 writ of habeas corpus. *Id.* In an unpublished opinion in 2018, the Nevada Supreme Court recognized
 13 the scope of a post-conviction writ of habeas corpus is limited, “[b]ecause Mack’s conviction arises
 14 from a guilty plea to murder and an Alford plea to attempted murder, he was limited to raising claims
 15 that the plea was entered involuntarily or unknowingly or without the effective assistance of counsel.”
 16 *Mack v. State*, Case No. 69225, 2018 WL 366896, *1 (Nev. 2018) (citing NRS 34.810(1)(a)).

17 The structure of NRS 34.810(1)(a) provides this Court a clear and unambiguous directive.
 18 This Court shall dismiss a petition for habeas corpus if the conviction was based on a guilty plea
 19 unless one of two narrow exceptions apply: (1) the petition is based upon an allegation that the plea
 20 was involuntary or unknowingly entered; or (2) the petition argues the plea was entered without the
 21 effective assistance of counsel. NRS 34.810(1)(a). The language restricts the right of petitioners to
 22 rely upon a petition for habeas corpus to challenge anything about the process of their conviction
 23 other than certain aspects of the plea. *Id.* Importantly, the plea is the object of both exceptions. *Id.*
 24 In this case, Petitioner is only challenging the ineffective assistance of counsel at the sentencing stage
 25 of his case, not the plea or the effective assistance of counsel at the plea stage. Therefore, the
 26 exceptions do not apply and NRS 34.810(1)(a) functions as a mandatory procedural bar to Petitioner’s
 27 claims.

28 ///

1 This Court is not persuaded by Petitioner's arguments that this application of the statute denies
2 him fundamental constitutional rights. The standard, as explained by the Supreme Court of the United
3 States in *Hill v. Lockhart*, provides that "the defendant must show that there is a reasonable
4 probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted
5 on going to trial . . ." 474 U.S. 52, 59 (1985). As such, NRS 34.810(1)(a) is a codification and
6 application of that principle and must be followed by this Court. Even if this Court was persuaded
7 by Petitioner's arguments, the Nevada Legislature has placed a mandatory restriction that bars
8 Petitioner's challenge that this Court cannot ignore.

9 Further, Mr. Muhammad's Supplemental Petition recognizes that a hearing is not required if
10 factual allegations are belied by the record. Supp. Pet. at 2:19-21. The Supplemental Petition
11 contends that Mr. Muhammad's counsel Mr. Hickman, lost documents that should have been
12 provided to Mr. Neidert, the counsel who represented him at the sentencing, since these documents
13 would have caused this Court to impose a more lenient sentence. *Id.* at 6:8-10. These documents
14 would have informed this Court that Mr. Muhammad was attending college, bettering himself
15 educationally, and that he enjoyed the support of his family and the community. *Id.* at 6:16-22. They
16 consist of letters from educated members of this community who would have voiced support for Mr.
17 Muhammad. *Id.* at 6:23-26. They would have shown that he "protested in Venezuela to help others,"
18 made many friends during his protests, voted in 2018 for the first time, and worked on a campaign
19 for London Breed, the first African American Mayor of San Francisco. *Id.* at 7:4-18.

20 However, the allegations that this information was not presented to this Court is belied by the
21 record in this case. While Mr. Muhammad may not have previously presented these exact documents,
22 the argument advanced by the Supplemental Petition ignores the extensive information that was
23 presented to this Court in the Statement Regarding Sentencing ("Statement") filed on June 28, 2019
24 by Mr. Neidert in advance of Mr. Muhammad's sentencing. The Statement provided Mr.
25 Muhammad's reasons for leaving this country for Venezuela for twenty-six (26) months during the
26 pendency of his case, the history of the birth of his daughter in Venezuela and his need to establish
27 that he was her father, his education at City College of San Francisco as a student and voting rights
28 activist and his efforts to better himself in custody while awaiting sentencing through parenting and

1 anger management classes. Stmt. at 2:1-3:3. Attached to the Statement are numerous Exhibits that
2 consist of verification of the contents of the Statement to include character letters and Mr.
3 Muhammad's City College of San Francisco identification card. The Exhibits also include the
4 evaluations that Mr. Neidert secured from Mr. Muhammad in advance of sentencing to include
5 substance abuse and psychological and an admission letter to the Salvation Army's Rehabilitation
6 Program. Accordingly, the argument that this Court was not in possession of the documents that Mr.
7 Muhammad claims were lost is belied by the record. While this Court did not have the photos of him
8 protesting in Venezuela or campaigning for Ms. Breed, this Court was otherwise in possession of the
9 information that Mr. Muhammad claims was absent.

10 The Supplemental Petition also argues that "[t]o date, this office has received support for Mr.
11 Muhammad from 5 individuals who wish to provide support for Mr. Muhammad at the evidentiary
12 hearing." *Id.* at 6:11-15 (Emphasis added). Importantly, these individuals have come forward *after*
13 the imposition of the sentence by this Court. There is no allegation in the Supplemental Petition that
14 Mr. Muhammad's sentencing counsel failed to call these people at the sentencing; just that they would
15 now like to speak on his behalf. If this Court were to set an evidentiary hearing for the purpose of
16 allowing Mr. Muhammad to present their testimony, it would be the equivalent of resentencing him,
17 which is simply not permitted by law.

18 Based upon the foregoing and good cause appearing,

19 IT IS HEREBY ORDERED that the State's *Motion to Dismiss* is GRANTED.

20 IT IS SO ORDERED.

21 DATED this 28th day of May, 2020.


22 _____
23 KATHLEEN DRAKULICH
24 DISTRICT JUDGE
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28

CERTIFICATE OF SERVICE

2 CASE NO. CR18-1944

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 28th day of May, 2020, I electronically
5 filed the **ORDER GRANTING MOTION TO DISMISS** with the Clerk of the Court by using the
6 ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the
8 method(s) noted below:

9 Electronically filed with the Clerk of the Court by using the ECF system which will send a notice
10 of electronic filing to the following:

11 || KEVIN NAUGHTON, ESQ. for STATE OF NEVADA

12 KARLA BUTKO, ESQ. for RAHIM MUHAMMAD (TN)

13 Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage
14 and mailing by Washoe County using the United States Postal Service in Reno, Nevada:
15 [NONE]

Danielle Redmond
Danielle Redmond
Department I Judicial Assistant

3:22-cv-00142

Rahim Muhammad #8067
LCC
1200 Paxton Road
Lovelock, NV 89419

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District of Nevada

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